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THE LATER HISTORY OF THE STANDARD OIL COMPANY.*

I.

1877-1883.

THE organization of the Standard "Alliance," which in 1879 controlled the transportation of oil by rail and by pipe-line and produced 95 per cent. of the refined oil of the country, was an informal substitute for the modern trust. The bond of unity was common ownership of stock in the various companies of the "Alliance" and personal agreement between the officers of the respective companies and the officers of the Standard Oil Company.† The Standard Alliance included the Standard Oil Company of Cleveland, the Standard Company of Pittsburg, the Acme Oil Company of New York (located at Titusville), the Imperial Oil Company at Oil City, the Atlantic Refining Company of Philadelphia, the Camden Company of Maryland, Charles Pratt & Co. of New York, J. A. Bostwick & Co., Sone & Fleming Manufacturing Company, Warden, Frew & Co. of Philadelphia, and the Baltimore United Oil Company of Baltimore.‡ The petroleum producers, on the other hand, had meantime been organizing to stay the further progress of the Standard "Alliance" in a league which suggested in its forms a revival of the fifteenth-century guild.

In 1877 local lodges of the fraternal General Council of the Petroleum Producers' Union had been formed, under the strictest obligations of secrecy, throughout the oil region. Eventually, from 2,500 to 3,000 producers were enrolled as members in the local lodges, which sent delegates to the General Council. The object of the Union was "the collection and dissemination of valuable information respecting the production, storing, or

* Being the continuation of "The Rise and Supremacy of the Standard Oil Company," *Quarterly Journal of Economics*, February, 1902, which brought the history of the company to 1879.

† Hepburn Report, 1879, 2614.

‡ *Ibid.*, p. 42, 2615.

tanking, shipping, refining, and consumption of petroleum; the securing the most advantageous facilities for transportation; the protection of the producing interests against unfriendly legislation and unjust exactions; the correction of all abuses and pernicious practices detrimental to the producing business and the improvement of the trade generally." At the first meeting of the General Council, in the Universalist church in Titusville, November 21, 1877, Mr. Benjamin B. Campbell, a well-known opponent of the Standard, was elected president; and standing committees were chosen on finance, reports, and statistics, transportation, pipe-lines, patents, refining, legislation, national legislation, and legal remedies. Once a month the General Council met regularly at Titusville.*

The first aim of the society was to stop the drilling of new wells and to induce producers to provide storage for their oil, in order that they might not be subject to the necessity of forced sales. Throughout north-western Pennsylvania, in the counties of Allegheny, Armstrong, Butler, Clarion, Venango, Crawford, and Warren, this object was effected; and, "had it not been for the unusual development of the oil field in McKean County," as the report of the General Council naïvely explains, these efforts might have succeeded. But "the producers continued to crowd each other with new wells and to rely solely upon the United Pipe Line to furnish storage and local transportation. The result was that the eager driller of wells found his product at the mercy of the purchaser, and was speedily subjected to low prices and loss of oil."† Of more importance were the efforts of the society to secure transportation facilities. At a time when the transportation agents, both local and to the seaboard, were in alliance with the Standard interests, the Equitable Petroleum Company, formed by the producers of McKean County to provide an outlet by pipe-line to the McKean & Buffalo Railroad, thence to Buffalo, and by way of the Erie Canal to New York, was enthusiastically encouraged by the General Council. The Committee on Legislation meanwhile had introduced into

* Investigation of Trusts, House Reports, First Session, 50th Congress, 1887-88, vol. ix. p. 692: a copy of the constitution is given, p. 47.

† Investigation of Trusts, Congress, 1888, 692.

Congress and into the Pennsylvania legislature bills regulating the companies engaged in the transportation of petroleum. These proposals, however, were not well received; and in its report in 1878 the disgruntled committee, describing its labors, said: "It has been simply a history of failure and disgrace. If it has taught us anything, it is that our present law-makers are, as a body, ignorant, corrupt, and unprincipled."* So far, in spite of all its activity, the General Council had brought no practical relief to the producers: so that when, in May, 1878, the Committee on Legal Remedies advised resort to whatever existing laws there might be, the Council at once authorized the committee to take the necessary steps.

The committee immediately laid its grievances before the attorney-general; and on behalf of the committee the attorney-general brought action against the United Pipe Line Company for the forfeiture of its charter, and prayed for an injunction restraining the Pennsylvania Railroad, the Atlantic & Great Western Railroad, the Lake Shore & Michigan Southern Railroad, and the Dunkirk, Allegheny & Pittsburg Railroad from "combining to create and perpetuate a monopoly of the oil business, from granting unreasonable rebates to the Standard Oil Company and its allies, from refusing cars to shippers, from breaking connections with other roads, from buying and selling petroleum in connection with the Standard combination, from refusing transportation, from making discriminations in form of one shipper against another, and from granting greater facilities to one than to another."

Amid great popular excitement at Bradford these proceedings were decided upon. Mass meetings were held, processions paraded the streets, and riot seemed imminent. The recent months had been marked by heavy depression in the oil trade and bitter antagonism of producers and oil buyers. Riotous meetings were held before the United Pipe Line Company's offices; men were hanged in effigy; and processions of masked men marched the streets, and groaned and hooted before the offices of the buyers. Numerous secret societies were formed among the producers; and every morning the streets and side-

* Investigation of Trusts, Congress, 1888, 693.

walks were found placarded with cabalistic signs and proclamations. About this time occurred the investigation of railroads in New York by the Hepburn Committee of the legislature; and a similar investigation of the petroleum trade in Pennsylvania was being urged. In the popular frenzy of the moment all the officers of the Standard Oil Company were indicted for conspiracy in restraint of trade, and requisition made to the governor to secure their extradition from New York.*

All these troubles arose from the depression incident to the excessive production of the McKean County wells, which was greater than the capacity of the storage tanks. The storage tanks were built by the pipe-line companies under contract with the producers to "carry in its system of pipes and tanks an amount of petroleum not exceeding the capacity of the tanks." The company took the position that, under this contract, when a producer once filled a tank to its capacity, the company's obligation ceased: merely selling to the Standard certificates for the contents of the tank did not relieve the tank of oil; and, accordingly, since it had contracted merely for the oil in the tank, the company might refuse to take oil from the well except at a reduced price. As an incentive to hasten the movement of oil from the tanks in the producing region, the Standard agreed to allow, to the producer who sold his oil for immediate shipment at this reduced price, an equivalent amount of room for his future production. Under the circumstances, such a rule was wise. Although new tanks were being built as fast as possible, the existing tanks were full and not all the oil could be stored. By extraordinary effort however, and the expenditure of millions of capital, the Pipe Line Company finally erected sufficient tankage to hold the accumulated surplus of oil; and the producers in due time were satisfied.

In the suit which was brought against the United Pipe Line Company, asking for the forfeiture of its charter on the ground that it had made discriminations in pipeage, it appeared that, so far as any discriminations existed, they were

* Investigation of Trusts, Congress, 1888, 706.

due to contracts for special rates inherited from the lines which had recently been absorbed in the company,— among them, curiously enough, one between a member of the prosecuting committee of the Producers' Union and the Mutual Pipe Line Company.* These discriminations were recognized by the Standard to be contrary to public policy, and were at once discontinued. The grievance for which the producers had brought prosecution against the railroads was a shipping agreement between the Standard and the railroads. This agreement provided that, since the Standard shipped 90 per cent. or more of the crude petroleum of the region, it might make requisition at any time for that per cent. of the oil cars of the railroad. The producers maintained, however, that, since the Standard owned already a large number of private cars running on the railroads, it ought not to be allowed its pro rata allotment of the railroad's cars upon demand; particularly when, as happened at this time, the 10 per cent. of railroad oil cars was insufficient to transport the oil which independent producers wished to ship. The demands of the producers were unusual; and the refusal of the transportation companies to grant them seems quite within their rights. When it is considered that, meantime, propositions were being made to the producers by the Standard, according to which the price of crude oil should be based upon the relative price of refined, it would seem that a fair attempt, at least, had been made to satisfy the producing interest.† Indeed, the issue of those suits proved them to be merely the ebullition of excited popular feeling. The indictment of conspiracy against the officers of the Standard was continued, and eventually dropped.‡ The suits against the Pennsylvania Railroad and against the United Pipe Line Company were protracted, § and finally dismissed by an agreement among all parties; and with the passing of this period of litigation the importance of the Petroleum Producers' Union practically ended.

In 1881 the Standard Oil Company of Ohio, the nucleus of the Standard "Alliance," was a corporation capitalized at

* Report of Industrial Commission, 1900, i. 476-479.

† Investigation of Trusts, Congress, 1889 694.

‡ *Ibid.*, 710.

§ *Ibid.*, 711.

\$3,500,000. Since the formation of the "Alliance" it had maintained connections with its allies by a union, not of corporations, but of stockholders. "Then," as the solicitor of the Standard Oil Company explains, "for convenience of control and management the Standard Oil Trust was formed. It was simply an agreement, placing all the stock of these various companies in the hands of trustees, declaring the terms on which they were held, and providing for the issuance of a certificate showing the amount of each owner's interest in the stock so held in trust. This agreement did not in any essential manner change the character of the association previously existing. Its essential character was simply a common ownership of stock in various corporations. If they had so preferred, the owners of these several associated companies could have organized—in the State of New York, for example—with any capitalization desired. Each could then have lawfully combined with all the other companies, forming one corporation to transact business wherever desired. But it seemed preferable, instead of organizing one corporation in New York, to organize a corporation in each State where business was being carried on, so that the business transacted in each State might be conducted by a home corporation, subject in all respects to the law of the State where located. Accordingly, we organized a Standard Oil Company in New York, in New Jersey, in Kentucky, in Iowa, in Minnesota; and similar corporations already existed in Ohio and Pennsylvania." *

As the first "trust" form of combination, the agreement under which this union was brought about deserves attention. There were three classes of parties to the contract: first, all the stockholders and members of the Standard "Alliance," together with members of some other companies; second, all the more important officers and stockholders of these several companies; and, third, a portion of the stockholders and members of some additional corporations and limited partnerships. Provision was made for the admission of new companies and individuals and for the formation, whenever advisable, of a Standard Oil Company in any State or Terri-

* S. C. T. Dodd, quoted in *Trusts or Competition*, edited by A. B. Nettleton, Chicago, 1900, p. 197.

tory in the Union. The parties of the several classes were to transfer all their property to the Standard Oil Companies in their several States, in consideration of which they should receive stock equal at par value to the appraised value of the property so transferred.* This stock — and here is the significant feature of the new organization — was to be delivered to trustees, and held by them and their successors thereafter; and no subsequent issue of stock should be made by the companies except to these trustees. In return for the stock intrusted to them, the trustees were to deliver trust certificates, equal to the par value of the stock of the several Standard Oil Companies to be established and to the appraised value of the stocks of other companies delivered to the trustees. The trustees provided for were nine in number. They were John D. Rockefeller, O. N. Payne, and William Rockefeller, elected to hold office till 1885; J. A. Bostwick, H. M. Flagler, and W. G. Warden, to hold office till 1884; and Charles Pratt, Benjamin Brewster, and John D. Archbold, to hold office till 1883. At each annual meeting the certificate owners elected three trustees, for three years each, to fill vacancies due to expiration of term. Such was the “trust” as formed by the agreement of January 2, 1882.†

By an amendment two days later this agreement was slightly changed, as it was deemed inexpedient that all the companies mentioned should transfer their property immediately to the several Standard Oil Companies. The trustees were given power to decide what companies should convey their property and when the sale should take place. The powers of the trustees, then, as defined by the “trust” agreement, were to collect on the stock which they held the dividends of the several constituent companies, and afterwards, upon the trust certificates outstanding, to disburse their receipts as dividends.

*The 39 companies who signed the agreement were subsequently merged into 20. The list of the original 39 is given in *Investigation of Trusts*, 1888, Congress, 350. The list of the resulting 20, with the appraisal of their property, is given in *Report of the Industrial Commission*, 1900, i. 301. The capitalization of these companies is \$102,233,700; the excess of the appraisal over the capitalization is \$19,337,612.63.

†The trust agreement is given in full in *Investigation of Trusts*, Congress, 1888, 307.

Four years before the formation of the trust, two pipe-line companies, the Seaboard Pipe Line Company and the Equitable Petroleum Company, projected to afford an outlet to the seaboard, had been organized by oil producers.* Upon their failure, the producers organized the Tidewater Pipe Line Company, which ran from the Bradford region to Williamsport, a distance of 110 miles; and thence, by a connection with the Philadelphia & Reading Railroad, the oil was carried a distance of 250 miles to Philadelphia.† On the 1st of June, 1879, this company commenced the shipment of oil. The railroads were not content to see the oil traffic slip through their hands; and on the 5th of June, at a conference between the four trust lines at Niagara Falls, resolute measures were adopted to drive this rival transportation agent from the business. The rate on crude oil per barrel was lowered to 20 cents on all oil of the Standard "Alliance" moving from the oil regions to New York, Philadelphia, and Baltimore.‡ A corresponding reduction of the rate to the general public was made from \$1.15 to 30 cents. These rates took effect at once;§ and, as competition continued, a further reduction was made on August 1 to 15 cents per barrel.||

Throughout the period of the organization of the trust, and for a full year after, this fierce contest between the railroads and the Tidewater Pipe Line Company continued. The immediate effect, of course, was to benefit the shippers, and particularly the largest shipper, which was the Standard. The ownership by the Standard of the terminal facilities and of the greater number of the oil cars of the railroads now became a fact of importance. In consideration of its heavy investments in these interests, and of its agreement to ship and to unload its oil at its own risk, the Standard had already been allowed rebates.¶ But now the Standard began the building of pipe-lines to the seaboard and the formation of the National Transit Company. As pipe-lines were a cheaper mode of transportation than railways, the building of these lines made necessary a

*Investigation of Trusts, Congress, 1888, 696.

†Hepburn Report, 1879, 3493; Report of Industrial Commission, 1900, i. 696.

‡The rates are given in full in Hepburn Report, Exhibits, 1879, 621, 622.

§Hepburn Report, 1879, 3688.

|| *Ibid.*, 45.

¶ *Ibid.*, 1471.

readjustment of freight rates; and, as the pipe-lines then building could not carry the oil the entire distance, contracts for joint carrying had to be made with the railroads. The first contract — made between the National Transit Company and the Pennsylvania Railroad on May 6, 1881 — related to the apportionment of the freight when the haul was partly by pipe-line and partly by rail. The Pipe Line Company guaranteed the railroad one-third of the transportation of oil to the seaboard.* The Standard was to pay exactly the same rate as other shippers over the railroad. On such oil as was carried partly by pipe-line and partly by rail, a through rate was made, of which the pipe-line naturally received a share; and, finally, the Pipe Line Company agreed to remit part of the charge of its local pipes to the railroad. Instead of a contract for rebates to the Standard, this was a contract for rebates to the railroad. The reason for this contract was that the seaboard pipe-line of the Standard did not extend beyond Hamilton, Pa.; and to compensate the railroad for its low rate of freight and for its grants of rights of way — no free pipe-line law then existing in New Jersey — these rebates were provided.

Strengthened by these mutually helpful contracts, the National Transit Company and railroads were meanwhile wearing out the Tidewater Pipe Line Company, and in 1883 forced it to cease its opposition. The company was never absorbed by the Standard Oil Trust; but on October 9, by an agreement with the National Transit Company, it agreed to accept as its share of the oil traffic $11\frac{1}{2}$ per cent. of the total pipe-line transportation of petroleum to the seaboard, and was guaranteed \$500,000 in annual profits for fifteen years.† With this settlement the war of the transportation agents ceased, and the Standard Oil Trust established itself in the strategic position which substantially controlled the transportation of oil to the seaboard. By the early seventies the Standard had attained the pre-eminence in mechanical efficiency which it has ever since maintained; by the agreement with the Pennsylvania Railroad in 1878 it had gained a dominance over transportation which it never since has lost; and by its contract in 1881 it made possible the completion

* Report of the Industrial Commission, 1900, i. 760-763.

† *Ibid.*, 738.

of its pipe-line to the seaboard and its independence of railroads. Such contracts as the Standard subsequently made with the Pennsylvania Railroad were agreements by which the railroad got some part of the freight, though it did no part of the carrying. The Standard Oil Trust now gave rebates instead of receiving them. Over every branch of the industry, in 1883, it was supreme.

II.

1883-1892.

From the very beginning of the oil industry in Pennsylvania, movements for the restriction of oil production had been frequent. Restriction had been the aim of the Petroleum Producers' Association at its organization in 1869. The association had maintained an agency to store all oil above a certain amount and keep it from the market. This early "shut-down" failed because of the enormous production in Butler County. Succeeding "shut-downs" in 1872, 1874, 1876, and 1878, met with similar fate. In 1884 there was another general movement among producers to restrict drilling; but, through the refusal of the operators who were running large wells in the new Thorn Creek district, the movement was only partially successful. It led, however, to the organization of the Producers' Associated Oil Company, with a capital stock enabling it, when necessary, to purchase oil property in order to curtail production.*

On the 1st of October, 1887, this new organization, embracing 85 per cent. of the 14,000 producers in the oil regions, agreed with the Standard Oil Company to restrict production. From June to October the Producers' Protective Association, by various secret and public meetings, had encouraged the movement. The conditions of the industry favored the organization. The accumulated stock of oil was 31,000,000 barrels, prices were below the remunerative point, and the Standard was losing by the deterioration of oil in its store. After conference between the Standard and the associated producers,

*Report of Industrial Commission, 1900, i. 426-430.

it was agreed that the producers should restrict their production one-third during the following year, in consideration for which the Standard turned over to the producers 6,000,000 barrels of oil, at the market price at the time of the contract, and secured to the producers the profit from the anticipated rise in prices.*

By this bargain the producers immediately profited. On the oil they received from the Standard they made nine cents a gallon. Encouraged by their success, they made agreements during the next year with the Well Drillers' Union to equalize the amount of oil produced by each individual.† Although it was not possible to bring all the producers into the agreement, the price of crude oil was advanced by this restriction 29 cents per barrel. The price of refined oil to consumers was advanced about three-fourths of a cent,—an increase somewhat less than the advance in crude oil. Although the Standard Oil Company had entered into the agreement only at the urgent request of the producers, as the chief refiner it bore the burden of the advance; and when the "shut-down" was found to be injuring the laborers employed in the drilling of wells, and the Producers' Association set aside 1,000,000 barrels of oil for their relief, the Standard added another million for the same purpose. This philanthropy, in the end, proved not unprofitable. The Standard benefited by the harmony it had established; and the producers, by relieving the well drillers, prevented them from working for producers outside the agreement.

As was to be expected, the results of this movement were only temporary. In time the "shut-down" was abandoned, but not until it had gained a great though transient benefit, and had given the impulse to the building of several pipe-lines.

To the producers the Standard had come as a pacificator, restoring harmony where before had been mutual suspicion and distress. To the refiners, however, the Standard had never appeared other than a competitor, enabled by its greater size

*Investigation of Trusts, Congress, 1888, 52.

† An account of the negotiations and copies of the contracts is given in Investigation of Trusts, Congress, 1888, 52-60, 69. See also Report of the Industrial Commission, i. 429-432, 459-462.

to secure favors denied its smaller rivals. Freight discriminations, before the passage of the Industrial Commission Act in 1887, were common: all oil shippers received some rebate from the published rate, the amount varying roughly according to the favorable position of the refiner for making his bargains.* How completely proper this seemed to the railroad manager of that day, and how sound appeared the reasons on which it was based, is well illustrated by the decision of the Ohio court in 1884, in a suit brought by a firm of independent refiners against the Lake Shore & Michigan Southern Railroad to prevent the granting of rebates to the Standard Oil Company.† The rebates complained of, the court found, amounted to ten cents per barrel on all the oil the Standard shipped; but the consideration for these rebates the court found in the following fact: —

Prior to 1875 it was a question whether the Standard Oil Company would remain in Cleveland or remove its works to the oil-producing country, and this question depended mainly upon rates of transportation from Cleveland to the market; prior thereto, the Standard Company shipped large quantities of its products by water to Chicago and other lake points, and from thence distributed the same by rail to inland markets; it then represented to the defendant the probability of such removal; water transportation was very low during the season of navigation; unless some arrangement was made for rates at which it could ship the year around as an inducement, it would ship by water and store for winter distribution; it owned its tank cars and had tank stations and switches, or would have, at Chicago, Toledo, Detroit and Grand Rapids, on and into which the cars and oil in bulk could be delivered and unloaded without expense and annoyance to defendant; it had switches at Cleveland leading to its works at which to load cars, and would load and unload all cars; the quantity of the oil to be shipped by the company was very large, and amounted to 90 per cent. or more of all the oil manufactured or shipped from Cleveland, and, if satisfactory rates could be agreed upon, it would ship over defendant's road all its oil products for territory and markets west and northwest of Cleveland, and agree that the quantity for each year should be equal to the amount shipped the preceding year; upon the faith of these representations

*Report of Industrial Commission, 1900, i. 790.

†Investigation of Trusts, Congress, 1888, 552. Schofield, Shurmer & Teagle v. Lake Shore & Michigan Southern Railroad.

the defendant entered into a contract; the rates were not fixed rates, but depended upon the general card tariff rates as charged from time to time [by which its shipments were] substantially to be carried from time to time at about ten cents per barrel less than tariff rates; in consideration of such reduced rates as to bulk oil, the Standard Company agreed to furnish its own cars and tanks, load them on switches and unload oil shipped in barrels without expense to defendant, and, by reason thereof, with less risk to defendant; and was also to ship all its freight to points west and northwest of Cleveland (except small quantities) to lake ports not reached by rail, and so to manage the shipments as to cars and times as would be most favorable to defendant. . . .

At a cost exceeding \$100,000 the Standard Company had constructed the terminal facilities promised and herein found; in actual fact, the risk of danger from fire to defendant, the expense of handling in loading and unloading, and in the use of the standard tank cars is less than upon oil shipped without the use of such or similar facilities; the Standard Company commenced by shipping about 450,000 barrels per year over defendant's road, which increased from year to year, until, in 1882, . . . the quantity so shipped on defendant's road amounted to 742,000 barrels, equal to 2,000 barrels, or one full tank load per day.

Said arrangements are not exclusive, but are at all times open to others shipping a like quantity and furnishing like device and facilities.

By successive contracts, the court found, this agreement was continued in 1880, 1882, and 1883; and, in conclusion, the court declared that the evidence presented supported the contention of the Standard that the advantages secured to the Standard by its contract with the railroad were not, in the accepted sense of the term, rebates, but were an equivalent for the lowered cost of freight. In so holding, the court was but following the current judgment of the time.

But there were at that time other departures from the regular tariff rates which cannot so readily be explained. Throughout 1888 there were sudden and distressing increases in the tariff rates for oil, which seriously inconvenienced the inland refiners.* A notorious example of such charges was found in the management of the Cleveland & Marietta Railroad by its receiver in 1885. The Standard, it appears, con-

* Report of Industrial Commission, 1900, i. 187.

trolled most of the pipe-lines in the Macksburg field connecting with the several stations of the railway; and its local manager was desirous of determining a through rate on oil from the well to Marietta. Accordingly, he arranged with the receiver of the railroad that the rate be 35 cents per barrel, and that the railroad should collect this rate and pay over to the Standard 25 cents for pipeage. This agreement was put in writing, and forwarded for approval and execution to the Standard Oil Company. Meanwhile the receiver raised the tariff rate for oil from $17\frac{1}{2}$ cents to 35 cents for all shipments made over this line, with the result that one refiner, carrying his crude oil from the well to the station by his own pipe-line, was forced to pay 35 cents freight, of which 25 cents was at once to be turned over to his competitor, the Standard Oil Company, for pipeage which it had never rendered. Whether the cost of pipeage warranted so large a proportion of the through rate going to the Standard is a question which cannot be answered off-hand. The indefensible method of collecting the combined pipeage and freight charges was more plain. The Standard Oil Company never carried this contract through, but sent it back to its manager with instructions to end the arrangement and refund to the shippers the amount of these wrongful rebates before suit was brought to remove the receiver.*

A more typical example of the rebates of this period is the contract between the National Transit Company and the Pennsylvania Railroad. According to this agreement the Transit Company, which was the transporting agent of the Standard Trust, agreed that, if out of the total amount of oil shipped to the seaboard the Pennsylvania Railroad should not have moved 26 per cent., the Transit Company should ship by the Pennsylvania Railroad the amount required; and the railroad should be entitled to one-half the current rate thereon. By another contract of the same date it was provided that, if the railroad company preferred, the Transit Company itself would carry this extra quantity, and would then pay to the railway freight on the oil thus carried by

* Report of Industrial Commission, 1900, i. 556-559.

itself, after deducting 6 or 10 cents a barrel as compensation for pipeage. In return for these stipulations it was agreed that all joint rates from any delivery point of the local pipe-lines to any refining or terminal point should be fixed by the railroad in concurrence with the Transit Company; and at the time of the agreement this rate was fixed at 45 cents to the seaboard.*

The advantage to the railroad, under this agreement, is manifest. Throughout the continuance of this contract, which was the last one made and continued till 1887, there was a regular deficiency in the share of the oil to be carried by the railroad, amounting in some months to 80,000 barrels and settled by payments of the Transit Company to the railroad.† Essentially, it was a contract of rebate to the railways rather than of rebate to the Standard, the motives of which were similar to the contract of 1881. It was a payment to the railroad in compensation for grants of rights of way. Other pipe-lines could not get through to the seaboard because they could not make terms with the railroads. The advantage accruing to the Standard from such a contract as this was good will, of which it stood at that time in great need. "The pipe-line was then completed to the seaboard," explains Mr. Dodd, solicitor of the Standard.† "It could not have reached that point without the consent of the railway company, as no free pipe-line law then existed in the State of Pennsylvania. It was still necessary to have a traffic contract with the railroad to deliver oil to the railroads at different points on the through line." Clearly, the injustice of this contract, if any there be, should be laid at the door of the railways. To them, rather than to the Standard, did the greater benefit accrue. And if this contract, by providing that joint rates for the transportation of oil should be fixed by the railroad in concurrence with the Transit Company, opened the way to such abuses as the sudden and arbitrary raising of rates at less important shipping points not used by the Standard, the blame belongs rather with the railroad than with the Standard Oil Company.

*Report of Industrial Commission, 1900, i. 663-666.

† *Ibid.*, 761.

The passing of the Interstate Commerce Act, in 1887, makes a natural division in the record of the railroad arrangements made by the Standard. By the terms of that act, discriminations were forbidden, and such contracts with shippers as had been the rule since the late 60's were made illegal. The Interstate Commerce Act seems to have been observed by the Standard Oil Company. "Little testimony," says the Industrial Commission of 1900, "was brought forward to prove that it still actually receives lower rates for shipment over the same tracks than its competitors."* In the testimony before the commission, on this latter point, the opinion was expressed by witnesses testifying in opposition to the Standard Oil Company that direct discriminations and rebates are still received by the Standard; but the evidence adduced in proof of this opinion was unsatisfactory, and was considered entirely inconclusive by the commission.†

* Report of the Industrial Commission, 1900, i. 158.

† *Ibid.*, 159.

Apart from hearsay the only evidence produced to prove the existence of discrimination in favor of the Standard were the letter of the receivers of the Baltimore & Ohio Railroad to the Interstate Commerce Commission, December 22, 1898, and the case of Logan, Emery & Weaver *vs.* the Pennsylvania Railroad Company.

The letter of Receivers Cowen and Murray states:—

"Within the territory north of the Ohio River and east of the Mississippi the railroad carriers are transporting the larger part of the interstate traffic at rates less than those shown in the published tariff filed with your commission, which are by statute the only lawful rates.

"While this condition continues, there will exist the unjust discriminations between persons, localities, and particular descriptions of traffic, the prevention of which is the main object of the act of establishing your commission. Only by securing the uniform charging of the published rates can the just quality of service and of charge required by law be secured either between persons or between localities." (637.)

This letter doubtless sets forth a deplorable fact, but how it relates to the case of the Standard is not clear.

The Logan, Emery & Weaver case was brought in 1887 and continued until 1890. The president and the general freight agent of the Pennsylvania Railroad both testified in 1890 that positively no rebates had been paid since 1887. But the auditors and assistant auditors of the road testified that rebates from 8 to 28 cents per barrel had been granted since 1887. From the facts of the case it appears that the Standard Oil Company was in no way concerned. Indeed, in the evidence, as cited by witnesses testifying in opposition to the Standard, the chief recipient of the rebates was the Bear Creek Oil Refining Company, with which B. B. Campbell, originator of the Petroleum Producers' Union, was associated. Mr. Campbell testified that from October 1, 1884, until July 1, 1888, his company had received rebates on shipments from Coleman Station to Philadel-

In other ways than by discriminations in actual rates the Standard Oil Company, after 1887, secured special advantages in transportation. The shipments of oil from those localities which it chose for distributing points were so large that the freight rates for that locality were naturally most favorable to this chief commodity of shipment. Competitive points, points where several railroads compete, or where water transportation competes with the railways, were generally fixed upon as distributing centres. Accordingly, lower freight rates prevailed at the large shipping points of the Standard than prevailed at places where its competitors made most of their shipments. The Standard Oil Company located its refineries at points nearer the place of consumption, and so economized in shipping distance. Thus it transferred most of its business from Cleveland to Whiting, Indiana, in order to be nearer the Southern market and to the West, and began to supply the Eastern market from its refineries at Bayonne, New Jersey. By wise distribution of its refineries the Standard became largely independent of the changing freight rates that distressed those independent refiners who shipped their oil long distances.* A less honorable advantage, it has been alleged, accrued to the Standard by the practice, among the railroads, of under-billing the weight of the contents of the tank-car. As to interstate shipments, this has been specifically denied by representatives of the Standard Oil Company; and the

phia, Communipaw, and Bolivar, amounting in all to \$48,101. The case was settled out of court, as the plaintiffs were too poor to carry the suit further. A settlement was accepted, according to which the railway paid \$35,000 and the costs of the suit. (633, 635, 660.)

This reported case, the only documentary evidence directly relating to discriminations in the oil traffic, explicitly excludes the Standard Oil Company, and incriminates only a leading independent refiner.

Replying to these charges, Mr. Archbold, vice-president of the Standard Oil Company, submitted letters from officers of leading railways of the country in reply to a circular inquiry sent out by the Standard Oil Company, asking whether the respective roads had granted any advantages to that company, "either by direct tariff, rebate, under-billing, or in any other way." These letters specifically deny that any such preferences have been given to the Standard Oil Company, and many of them further state that the Standard Oil Company has used its influence with the railways to maintain agreed tariff rates and to support the Interstate Commerce Act. (515-528.)

*A vast amount of evidence bearing on this point is summarized in Report of the Industrial Commission, 1900, i. 161-163.

instances where such under-billing has occurred are explained as occasional errors.*

Immediately after the passage of the Interstate Commerce Act and the creation of the Interstate Commerce Commission the relative charges and advantages of tank and barrel shipments were brought in issue. Prior to 1888 it was universal to charge lower rates per 100 pounds for oil in tanks than for oil in barrels; but in 1888 the Interstate Commerce Commission ordered that the rates on oil in tank-cars and in barrels should be the same, the weight of the barrels being included in the weight charged upon. The railways complied generally with the order of the Interstate Commerce Commission; but later, when the independent refiner secured an order from the commission that the weight of barrels should be disregarded in charging for shipments of oil, the railways refused to comply with this order or to pay the damages assessed in reimbursement of the charge made for the weight of the barrels.† As to the relative advantages of tank-cars and barrels, and whether a relatively lower charge for oil in tank-cars than for oil in barrels is justifiable, there was much disagreement. The tank-car, it appears, is always unloaded by the consignee and loaded by the shipper; while the contrary is usually true with barrels. The barrel, it was urged, should not be carried free of charge, because it is a merchantable article, and its value is added to the price of the oil sold. On the other hand, the box-car in which the barrels are shipped can contain a return load, while the tank-cars must be returned empty.‡ The Standard is the largest shipper by tank-cars, and owns most of the tank-cars in use. It gains not only such advantages as are given to shippers by tank-cars, but also the mileage of three-fourths of a cent per mile which is paid by the railways for the use of its cars.§

With nothing more exciting than an occasional case before

* Evidence bearing on this point is digested in Report of the Industrial Commission, 1900, i. 165.

† "A case raising this point is pending before the United States courts." Report of Industrial Commission, 1900, i. 788.

‡ This question is discussed by the Interstate Commerce Commission in the following cases: i. 503, 722; ii. 389; iii. 186; iv. 228; v. 193, 660.

§ Report of the Industrial Commission, 1900, i. 167-170.

the Interstate Commerce Commission regarding shipments by tank-car, the Standard Oil Trust continued from 1887 until 1892. Its growth and prosperity had been steady. The property of the various companies that entered the trust in 1882 was valued at \$75,000,000. In 1892 the value was estimated at \$121,631,312; and 50 per cent. of this increase had come from profits invested and the remainder from additional capital subscribed.* The dividends meanwhile had risen from $5\frac{1}{4}$ per cent. in 1882 to 12 per cent. in 1891. During the ten years following 1882 there had been a gentle decrease in the price of refined oil, and a slight decrease in the difference between the price of refined and the price of crude oil,—a difference which measures the charge for refining.† The attitude of the Standard Oil Trust during these years was one of quiet dominance. It was now to meet an unexpected difficulty in the courts, which rendered necessary a complete change of organization.

III.

1892 TO THE PRESENT.

In 1891 the State of Ohio, by its attorney-general, began action to oust the Standard Oil Company of its corporate rights, on the ground that it had abused its corporate franchises in becoming a party to an agreement against public policy. The petition averred that in "violation of law and in abuse of its corporate powers and in the exercise of privileges, rights, and franchises not conferred upon it," the defendant company had become a party to the trust agreements of 1882. "All the owners and holders of its capital stock, including all the officers and directors of said defendant company, signed said agreements without attaching the corporate name and seal." Prior to the dates of the trust agreement aforesaid, the petition continued, the defendant's capital stock consisted of 35,000 shares. Upon the signing of said agreements, 34,993 shares of said stock, belonging to the persons

*Statement of Mr. S. C. T. Dodd, Report of the Industrial Commission, 1900, i. 799.

† *Industrial Combinations and Prices*, by J. W. Jenks, Report of Industrial Commission, 1900, i. 52.

who signed the agreement, were transferred upon the defendant's books to the nine trustees appointed and named in the agreement, by virtue of which "the nine trustees have been, ever since the signing of said agreements, and still are, able to choose and have chosen annually such boards of directors of said defendant company as they (said nine trustees) have seen fit, and are able to and do control the action of the defendant in the conduct and management of its business." *

In answer to this petition the Standard Oil Company denied that it had become a party to either of the agreements in said petition set forth, or that it had at any time observed or carried out those agreements. "Said agreements," continued the answer, "were agreements of individuals in their individual capacity and with reference to their individual property, and were not nor were they designed to be corporate agreements, and defendant denies that said agreements have illegally affected its corporate capacity or that defendant has permitted its corporate powers, business, and property to be exercised, conducted, and controlled in an illegal manner." †

By a demurrer to the defendant's plea the issue was squarely raised whether the act of all the stockholders, officers, and directors of a corporation may rightly be called the act of the corporation. "It seems to us," the plaintiff argued, "impossible to read the agreement and consider the proceedings which confessedly have taken place under it, without reaching the conclusion that there has been a studious design and effort on the part of the promoters of the trust scheme to obtain all the advantages of the actual presence and participation of the defendant corporation in the objects and purposes of the agreement without formally making it a party to it. But is substance to be sacrificed to shadow? Have we not shown sufficient actual corporate conduct to obviate the necessity for formal corporate action, such as the adoption of resolutions or the signing of a name?" ‡

The court adopted the argument of the plaintiff, and in its decision handed down March 2, 1892, based its rule on substantially the following reasons:—

* *State ex rel. v. Standard Oil Company*, 49 Ohio St. 138-155.

† *Ibid.*, 155-158.

‡ *Ibid.*, 163.

A corporation, apart from the persons who compose it, is, by the fiction of the law, to be regarded as a legal entity only for convenience in the transaction of its business. When all, or a majority of the stockholders' corporation, do an act which affects the property and business of the company, and which, through the control their numbers give them over the selection and conduct of the corporate agencies, does affect the property and business of the company in the same manner as if it had been a formal resolution of its board of directors, and the act so done is *ultra vires* of the corporation and against public policy, the act should be regarded as the act of the corporation, and, to prevent the abuse of the corporate power, may be challenged by the State. The trust agreements in question are acts which must be regarded as the acts of the corporations, and, as such, *ultra vires*; and, tending as they do to the creation of a monopoly, to the control of prices as well as of production, these acts are also against public policy, and accordingly contrary to law.*

The place this case occupies in the law of corporations is of the first importance. A previous case, in which the Sugar Trust was defendant,† had decided that an agreement of associations to which the corporations were party was *ultra vires*. Further than declaring partnership of corporations illegal, however, the law had not yet gone; and upon the question whether such combination was illegal, because in restraint of trade and opposed to public policy, the court had declined to express an opinion. In the instance of the Standard Oil Company the court made a bold advance: it not only forbade members of several corporations to combine as such and merge their interests in a trust, but it also declared such combination a restraint of trade, illegal, and quite opposed to public policy, and by the force of its decision put an end to the trust as a form of business combination.‡

Accordingly, in 1892 the Standard Oil Trust was dissolved, and the separate establishments and plants reorganized into twenty constituent companies. The trust certificates, when surrendered, were replaced by a proportion of the shares of each company, properly divided. By the form of transfer

* 49 Ohio St. 176-189.

† *People v. North River Sugar Refining Co.*, 121 N. Y. 582.

‡ S. C. T. Dodd, "The Present Legal Status of Trusts," 7 *Harvard Law Review*, 157.

adopted, the trustees placed in the hands of their attorney the amount of shares held by the trustees in the several companies of the trust, and authorized the attorney to secure from each of these companies transfer upon their corporate books of stock certificates for whole shares, and scrip for fractional shares thereof. Although the trust was formally dissolved, the men who were the trustees hold a majority of the stock in all the different companies which composed the trust, so that they work together as harmoniously as before. The replacement of trust certificates by proportional shares of stock in the separate companies continued slowly, and is not yet complete. Substantial unity of action among the several companies was not changed.*

Since the agreement between the Tidewater Pipe Line Company and the National Transit Company, 1883, by which the Standard "Alliance" had attained the dominant position in the transportation situation, there had been few attempts on the part of the independent producers to build pipe-lines. Under the impulse of the agreement among the producers and the Standard, in 1887, to restrict the production of oil, the Producers' Oil Company, Limited, had been organized and a pipe-line built from Titusville and Oil City to the new McDonald oil field. But this was a local pipe-line; and was speedily absorbed by another company, the Producers' and Refiners' Oil Company, in which independent refiners as well as producers were interested. In 1890 occurred the first attempt, on the part of the independent refiners, to build to the seaboard a pipe-line which should afford them transportation

*Precisely what may be called a "monopoly in restraint of trade" the courts have not clearly decided. Indefinite increase of business, the fixing of arbitrary prices, and the agreement not to trade with any one that trades with others than the covenantors have all been held not to be "monopoly" under the federal anti-trust act. On the other hand, American courts have held that the fact that "monopoly" has cheapened prices will not be considered, and that it makes no difference whether the monopoly be created by "contract" or "patent": the people, they declare, ought not as a body to be employees and servants. A "monopoly" need not be "permanent" or "complete": it may exist even if the article be susceptible of "indefinite production," and occurs when there is a "limitation" of "competition" and "production" with a view to "advance prices." (Cases are collected in 7 *Harvard Law Review*, 348-355.)

facilities equal to those of the Standard. With this aim in view the United States Pipe Line was projected.

The prime mover and first president of this company was Mr. Lewis Emery, an independent refiner in Bradford, Pennsylvania. To avoid heavy transportation charges, he had determined in 1890 to build a pipe-line to the coast; and, pending the further extension of his line, he had gone to the president of the Reading Railroad to secure a contract for transporting oil by that railroad from Williamsport, Pennsylvania. He was unable to make satisfactory terms, and, accordingly, determined to lay a pipe-line along the boundary of New York and Pennsylvania to Hancock, New York, and to secure a contract with the New York, Ontario & Western Railroad for transporting oil to the Hudson, with a right to construct a pipe-line later along its tracks. This contract was secured, and straightway the task of getting right of way for the pipe-line was begun.

Immediately the usual obstacle appeared.* The opponents of the new company began to seek the right of way over the same route. They bought mortgages against pieces of land along the route, to induce the owners to give them another right of way. They bought strips of land crossing the projected route. The railroads, also, proved unsympathetic. When an attempt was made to lay the pipe-line under the Erie Railroad at Bradford, it was opposed by force and later prevented by injunction from the courts. Another attempt to cross the Erie at Hancock met with similar fate. As a result, the pipe-line had to be constructed back seventy miles to the Susquehanna River, and built from Athens to Wilkesbarre. The crossing of every railroad brought on a legal contest; and, before Wilkesbarre was reached, \$150,000 had been spent in litigation.†

These vexatious delays were not different in degree or kind from those met by any railroad or pipe-line in the securing of its right of way. In almost every case they were due to the desire of land-owners and speculators to extort from the constructing company a high price for what the company absolutely

* Report of the Industrial Commission, 1900, i. 445, 486.

† Testimony of Mr. Emery, Report of Industrial Commission, 1900, i. 650-655.

needed. The National Transit Company, no less than the United States Pipe Line, had met these difficulties.* In the instance of the United States Pipe Line Company the motive for the opposition of the railroads was clearly the desire to preserve the great advantages in the oil traffic which their contract with the National Transit Company had secured them. The Standard Oil Company, it appears, was not engaged in these obstructionary tactics: for the very sufficient reason, indeed, that the projected pipe-line much more vitally concerned the interests of the railroads than it did those of the Standard.

For some time the pipe-line transported oil from Wilkes-barre by rail over the New Jersey Central Railroad. It then sought to continue its course to the seaboard. It crossed the Pennsylvania Railroad by purchasing an acre of land. When it reached the Delaware, Lackawanna & Western Railroad, it bought a farm in Washington, New Jersey, over which the railroad crossed, hoping that it might lay a pipe-line under the culvert. One Saturday night it laid its pipes, and stationed an armed force of 50 men to protect them. Next Monday two wrecking-cars of the railroad, with 250 men, rode in from Hoboken, and attempted to oust the employees of the pipe-line company. Resistance was made; and, to compromise the matter, it was arranged that men on each side should be arrested, in order to make a peaceable legal fight in the courts. But, while these proceedings were going on, a couple of locomotives were brought up by the railroad, and hot coals, hot water, and stones were thrown into the culvert. Finally, the railroad employees were driven away, and the pipe-line employees secured rifles, and held possession of the field for seven months. The lower courts decided in favor of the pipe-line; but, after four years of litigation, the Supreme Court of New Jersey decided that the pipe-line must be removed.

Eventually, the United States Pipe Line will build to Philadelphia. Meanwhile it transports its oil from Washington, New Jersey, fifty miles over the New Jersey Central Railroad of New York,† at a rate much lower than the Standard has ever received for like distances. According to the contract between

* Report of the Industrial Commission, 1900, i. 445, 486.

† *Ibid.*, 650-655.

the railroad and the Pipe Line Company, crude oil is carried 52½ miles at the rate of \$7.93 per tank-car, containing twenty tons; and the railroad returns the empty cars free. The contract is for one hundred years, and may be abrogated by the pipe-line upon five years' notice, the railroad having no right to abrogate it.*

Meantime the Standard Oil Company bought a large proportion of the stock of the Producers' Oil Company, with a view, as it would appear, to securing a controlling voice in its management; but it was so opposed in its ownership that it transferred its shares to a certain Mr. John J. Carter. Mr. Carter brought suit to be allowed to vote his stock; but, as the organization was a limited partnership, the courts upheld the company in denying him admission.† With the United States Pipe Line Company the National Transit Company was more successful. It secured \$383,000 out of a total of \$1,119,000 of stock; and, after permission to attend the meetings of the company and to vote the stock had been refused by unanimous vote of the other stockholders, the courts decided in favor of the National Transit Company. The purchase of stock was made, says Mr. Archbold, "with a view to having such knowledge as we could have rightfully through such ownership—as we should acquire in the progress of the affair";‡ and this information the National Transit Company gets from its one director upon the board of the United States Pipe Line Company.§

To prevent the Standard Oil Company from obtaining control of these independent organizations, the Pure Oil Company was projected in June, 1895, to secure control of the other independent companies. In 1897 the Pure Oil Company was organized as a New Jersey corporation with authorized capital stock of \$1,000,000, of which \$377,000 has been paid in. The business of the company has been marketing refined oil, especially in Germany; and it has proposed to increase its capital to \$10,000,000.|| In its structure this company is curiously like the former Standard Oil Trust. The holders of 66,000 shares in the company, being more than a majority, vest the voting

* Report of Industrial Commission, 1900, i. 513, 529.

† *Ibid.*, 270, 577.

‡ *Ibid.*, 577.

§ *Ibid.*, 656.

|| *Ibid.*, 261.

power of such shares in fifteen persons for twenty years; and it is agreed that one-half of all shares hereafter subscribed shall similarly be transferred to the trustees. The ownership of the shares may be transferred, but purchasers have no rights other than those provided by the trust agreement. The trustees are to vote as a unit, to the full number of the shares they hold, at the election of directors. One-third of the trustees retire annually, and their successors are elected by the general stockholders. By a vote of three-fifths of both classes of stockholders, on the redemption of the preferred shares at \$110, the trust may be cancelled.* The formation of the voting trust, it was claimed, was made necessary by the attempt of the National Transit Company to secure control through the purchase of shares of the Producers' Oil Company and the United States Pipe Line Company. In order to keep the control of the latter company in hands friendly to the independent interests, there was devised a voting trust agreement, according to which the signers vested their interests in the stock in a certain Mr. A. D. Wood as trustee for five years from the 1st of April, 1893, unless sooner terminated by a vote of three-fourths of the stock so held in trust. Mr. Wood was allowed full power to elect officers, but was bound to vote for persons interested in the business as independent refiners.† It is the purpose of the Pure Oil Company, at the expiration of this trust agreement, to anticipate any attempt of the Standard Oil Company to control the company.

While the independent refiners have been seeking security in the trust form of organization, the Standard Oil Company has adopted the contrary policy. In 1892 the trust dissolved into its constituent companies, the former trustees holding a majority of the stock in each corporation and the holders of trust certificates exchanging them for the stock of the several companies in agreed proportion. By purely informal harmony, a unity of action among these corporations was maintained. A large quantity of trust certificates were still outstanding; and the dividends, when declared, were at a certain

* A copy of the trust agreement of the Pure Oil Company is given in Report of the Industrial Commission, 1900, i. 466-470.

† Report of the Industrial Commission, 1900, i. 110.

percentage upon these outstanding certificates and at a properly adjusted rate upon the capital stock of the different companies, so that *the rate of dividends might* be considered as if it were entirely on the trust certificates at their former full amount. In order to secure more complete unity and to provide for the claims of smaller holders of trust certificates, the Standard Oil Company was organized under the laws of New Jersey in 1899. This corporation, though practically a new organization, was in form a continuation of the old Standard Oil Company of New Jersey, with an amended charter and capital increased from \$1,000,000 to \$110,000,000. This corporation was authorized to own the stock of any of the different corporations connected with the Standard Oil Company, and to buy from all parties who own such stock whenever they desired to sell.* "The new Standard Oil Company of New Jersey," said the Industrial Commission in 1900, "has recently been formed with the intention of transferring the stock of the different corporations into the stock of the new company, so that, when the transfer is finally made, one single corporation, the Standard Oil Company of New Jersey, will own outright the property now owned by the separate companies which are commonly known and mentioned together under the name of the Standard Oil Company. This combination at present has no formal unity. It has a practical unity as great as it will have probably after the complete change into the New Jersey company is effected."† Since 1900 about \$97,000,000 of the capital stock of this company has been used to purchase at par the stocks and properties of the other Standard companies, the capitalization of which was approximately \$97,000,000, but whose good will and earning power, as represented by the market value of the stock, aggregates \$650,000,000.

Interesting as they are, the particular forms which the corporate organization of the Standard and of its competitors assume are the least important phase of their competition. The progress of both the Standard and the independent companies has been most marked in recent years in foreign countries. To place

*A copy of the charter of the company is given in Report of the Industrial Commission, 1900, i. 1228.

† Report of the Industrial Commission, 1900, i. 11.

American oils in Eastern markets has required constant cheapening of production and transportation. An immense outlay for additional pipe-lines, more and larger steamers for ocean transportation, and the adoption of the tank-car and tank-wagon system of delivery have been made necessary, so that to-day crude oil is carried almost exclusively by pipe-lines, railroad transportation is confined to the products of crude oil, and the Standard has no arrangements apportioning to the railroads any share of the crude oil traffic. At present it is in its methods of marketing, by which it meets competition at home and abroad, that the real interest lies.

Until 1895 the sale of crude oil by the producers had been on the exchange at Oil City. Throughout the 80's the market in the exchange had been wildly speculative, but, gradually, less and less oil came to be sold on exchange; and, finally, on January 23, 1895, the Seep Purchasing Agency of Oil City, on behalf of the Standard Oil Company, posted a notice that thereafter the prices paid by it to oil producers "will be as high as the market of the world will justify, but will not necessarily be the price bill on the exchange for certificate oil." The Seep Purchasing Agency purchases for the Standard Oil Company 80 per cent. of the crude oil produced in Pennsylvania and Ohio, and by its action it fixes the price of crude oil in the oil regions. "We have before us," says Mr. Archbold, "daily the best information obtainable from all the world's markets as to what the offerings are and as to what it is possible to sell for; and we make from that the best possible consensus of prices, and that is our basis for arriving at the current price."* In the period from 1895 to the present, it may be added, the difference between the price of crude oil and the price of refined oil has remained almost constant,† which shows that this power of fixing the price of crude oil has not been abused, in spite of the fact that the Standard Oil Company during these years refined over 80 per cent. of the output of oil.‡

* Report of the Industrial Commission, 1900, i. 571. See also 142, 143.

† *Industrial Combinations and Prices*, by J. W. Jenks, in Report of Industrial Commission, 1900, i. 53.

‡ Report of the Industrial Commission, 1900, i. 560.

By its control of the pipe-line systems the Standard Oil Company maintains its advantage over the independent refiners of the oil regions. The practice of the pipe-line companies is to receive all oil produced in the wells with which their pipes are connected, gauging the amount and recording the quantity received from each producer. The producer may then receive from the company at any time the value of his oil in store at the price for that day, or, instead, may receive pipe-line certificates which are negotiable in the open market. The company lays pipes without extra charge to new wells, though they be fifteen or twenty miles distant. In the proper management and extension of the pipe-lines, more than in any other branch of the business, is the necessity for large investments of capital apparent.* In the early days of the industry the absence of these facilities completely demoralized the business; and for the adequate management of the lines no company except the Standard has been ready and able to make the necessarily enormous investment of capital. With their scant resources the smaller companies were unable to respond to the slightest sudden demand for new facilities. The superiority of the Standard Oil Company, in this particular, was clearly shown in the sudden development of the McDonald field in 1891. In July of that year the output of the McDonald field was 3,000 barrels daily. By the middle of August it had reached 15,000 barrels. By the first of September the Standard Oil Company, through its ally the National Transit Company, was able to handle 26,000 barrels a day; by the first of October it could handle 40,000 barrels a day; and, when in November the production of oil reached nearly 80,000 barrels per day, the capacity of the pipe-lines had risen above that figure. Iron tankage of the capacity of 3,000,000 barrels was erected during these months, and fifty-three miles of pipe laid in a territory of twelve square miles.† Had the National Transit Company, with its \$30,000,000 of invested capital, not been in control, it may be seriously doubted whether local enterprise could ever have effected so remarkable an extension of pipe-lines in so short a time.

Associated with its advantages in transportation is the

* Report of Industrial Commission, i. 799, 285, 553.

† *Ibid.*, 471-475.

advantage the Standard Oil Company has in distributing its refineries in strategic locations. Not only is a saving in transportation charges thus effected, but advantages accruing from cheaper land, labor, and fuel, are also secured. To gain this economy, the Standard Oil Company spent millions in new plants near New York and Philadelphia.* It bought the entire output of the refineries in the newly discovered oil region in Colorado,† and secured control in 1898 of 75 per cent. of the refining business in Canada;‡ and for the same purpose it has recently rebuilt refineries in Pennsylvania, in order to profit by the cheapened fuel.*

The vexed question of the effect of the Standard Oil combination on the price of refined oil will probably never be settled. Opponents of the Standard Oil Company declare that the Standard has not reduced the price of refined oil as compared with crude oil to any such degree as would be the case under open competition. The effect of the combination, they point out, is to be gauged only from the margin between the prices of refined and crude oil; and the reduction of this margin, though steady, is, in their opinion, by no means commensurate with the improvements in the processes of refining.§ In reply, Mr. Archbold of the Standard Oil Company has declared that his company is unable permanently to exact excessive prices. Temporarily, it might have such power; but, if it used this power arbitrarily, it would provoke heavier competition. There is, he admits, a certain amount of monopolistic power, coming from the aggregation of capital itself, which keeps prices higher than they would be under severe competition; but, at present, this power and its effect upon prices are very slight, and the lessened cost of doing business on a large scale more than compensates in lowered prices for the slight monopolistic power of getting higher prices.|| Perhaps the most significant criticism which the independent refiners pass upon the price which the Standard Oil Company gets for its

* Report of the Industrial Commission, 1900, i. 649.

† *Ibid.*, 384.

‡ *Ibid.*, 673.

§ In the chart accompanying Professor Jenks's report on *Industrial Combination and Prices* this margin is graphically shown. Report of Industrial Commission, 1900, i.

|| Report of Industrial Commission, 1900, i. 569, 570.

oil is that the improved methods of utilizing by-products in recent years have made by-products as remunerative as the refined oil itself; and yet the margin of price between refined oil and crude oil during this period has only slightly decreased. The statement has frequently been made that the Standard has reduced its prices in the territory of its competitors, and maintained prices at more profitable rates at non-competitive points.* Such a practice, as an instance of ordinary business competition, is not extraordinary. A similar charge could be brought against most large businesses; and, as those who bring the charge seldom take into account the varying cost of transportation to markets of varying means of communication, small probative value can be attached to their bare statement of difference in price. Of more serious nature are the charges that the Standard Oil Company suborns the employees of its competitors to secure information as to their shipments and customers, and that it resorts to unfair tests and adulteration of its oils and to the copying of brands with the design to deceive purchasers. On all these points the evidence is at best vague and inconclusive. The officials of the Standard Oil Company testify that it is their practice to ask their salesmen to keep their eyes open, and to inform the company as to those from whom different dealers are buying; but they flatly deny the charge of suborning the employees of their rivals, and very conclusively explain away the charge of fraud in the copying of brands and in the tests and adulteration of their products.† The energy of the Standard Oil Company, in developing new departments of the industry, and its enterprise in undertaking the production of all the chemicals and materials incidental to the process of refining, has been recognized, even by independent refiners, as truly great, and quite beyond what smaller competitors could have attempted.‡ The leading by-products are gasoline, naphtha, paraffine, lubricating oils, and vaseline products. In addition to these, fully 200 other by-products are extracted and used for medical purposes and for aniline

* A mass of evidence bearing on this point is digested in *Report of the Industrial Commission*, 1900, i. 112-117.

† *Report of Industrial Commission*, 1900, i. 118-127.

‡ *Lewis Emery, Report of Industrial Commission*, 1900, i. 627.

dyes. To utilize all these by-products requires the greatest specialization of methods, encouragement of invention, investment of capital, and extension of plant. A refinery of a capitalization of \$500,000 cannot realize such economies.* The undoubtedly large profit accruing to the Standard Oil Company from the utilization of by-products is owing entirely to its superior mechanical efficiency and organization.

Aggregation of capital has brought to the Standard Oil Company its greatest advantage in the development of foreign trade. In its contest on the Continent, and especially in Russia, with the great oil interests of the Rothschilds, of the Nobel Brothers, and of prominent England capitalists, its success has been entirely due to its great capitalization. Since 1871 the export of petroleum products has increased seven times, and of the present exports the Standard Oil Company ships 90 per cent.† In Russia the competition between the Standard and the Nobel Brothers is keen. The price of Russian crude oil is lower than that of American oil; and the Nobels are at present shipping it in tank steamers to India, China, and Japan. To meet this competition, the Standard Oil Company has established agencies all over the world, and has built bulk-tank-ships for transporting its product. With the exception of the trade in the Far East, where Russian competition is especially keen, the export price of oil has always been kept above the American price.‡

The present position of the Standard Oil Company is one of abundant prosperity and power. It is opposed by a combination—the Pure Oil Company—which works in harmony with an independent seaboard pipe-line—the United States Pipe Line—and with 66 independent refineries. The Standard controls 90 per cent. of the export trade and 80 per cent. of the domestic trade. By its control of the pipe-line situation it has become quite independent of the railroads. By its preponderant purchases of crude oil it has been able to steady and roughly direct the course of prices of petroleum. By its advantages in locating its refineries near their several markets and in utilizing by-products it has effected enormous economies in transportation and manufacture, and increased its

* Report of Industrial Commission, 1900, i. 570.

† *Ibid.*, 568.

‡ *Ibid.*, 791.

dividend from 12 per cent. in 1892,* when the Standard Oil Trust was dissolved, to 48 per cent. in 1901. The power of the Standard Oil Company is tremendous, but it is only such power as naturally accrues to so large an aggregation of capital; and in the persistence with which competition against it has continued, in the quickness with which that competition increases when opportunity for profit under existing prices appears, and in the ever-present possibility of competition which meets the Standard Oil Company in the direction of every part of its policy, lie the safeguards against the abuse of this great power.

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* Report of Industrial Commission, 1900, i. 799.